

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 17736 of 2003

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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PARMAR HASMUKH DEVABHAI - Petitioner(s)
Versus
COMMANDANT & 1 - Respondent(s)

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Appearance :

MR ANAND L SHARMA for Petitioner(s) : 1,
MR UI VYAS for Respondent(s) : 1 - 2.
MS ARCHANA U AMIN for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 22/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The petitioner has challenged in this petition the impugned order dated 31.7.2000 (Annexure-A) passed by the respondent No.1 under Rule 5 of the Central Civil Service (TS) Rules, 1965 and para 16(A) below Appendix "F" Note (2) of CRPF Rules, 1966, terminating his services on the ground of he having found unfit while on training.

It is the case of the petitioner that by letter dated 26.6.2000 (Annexure-B) he was informed that he was selected on ad-hoc basis for the post of Sipoy/G.D. and directed to produce documents enumerated in the order at the time of reporting on 3.7.2000. Thereafter, he was sent for training at Bangalore. He was served with letter / notice dated 31.7.2000 informing him that on expiry of one month period, his services shall be terminated with effect from 29.8.2000. On receiving such letter he made a representation dated 1.8.2000 (Annexure-C) by which he had requested to return his certificates. A reminder dated 26.9.2000 (Annexure-D) was sent to his first representation for returning the certificates. Annexure-E is the letter dated 15.10.2000 produced by the petitioner by which an attempt was made by the petitioner to show that he was declared unfit by doctor at Bangalore. After sending reminder dated 26.9.2000, he did not do anything and waited till December, 2003 for a period of 2½ years and then filed the present petition and challenged the

impugned order at Annexure-A.

It is no doubt true that the petition was admitted on 5.7.2004 by the Division Bench of this court, but it was straightaway admitted without issuing notice to the other side. On receiving the notice of Rule, the respondent had filed detailed reply affidavit wherein several contentions have been raised including the contention regarding gross delay and laches, which remained totally unexplained by the petitioner. It is the case of the respondent in the reply affidavit that he deserted when he was sent for training at Bangalore. Therefore, first he was asked to resume duty by sending a notice to the petitioner, but he did not report for duty and in fact later on applied for return of certificates and after a period of more than 2½ years as a second thought he decided to file this petition and challenged the impugned order of termination.

From the documents annexed to the reply affidavit, it is clear that by an order dated 29.8.2000, in all 4 persons including the present petitioner found deserted. The petitioner was in a disciplined police force. At the threshold of his career, while on training if he deserts, then there is no question of continuing such person in the service. Under the circumstances, when the impugned order at Annexure-A was passed, then there is no question of interference by this court in its extraordinary jurisdiction under article 226 of the

Constitution of India.

Mr.Anand Sharma, however, submitted that though the doctor of Gujarat at Gandhinagar found him fit, while on training doctor at Bangalore found him unfit and threatened, therefore, he left the training. On the ground that he found unfit his services were terminated, which is clear from letter dated 15.10.2000 at Annexure-E to the petition. This was explained by Ms.Archana Amin for the respondent that this letter came to be written in view of the representation dated 26.9.2000 submitted by the petitioner requesting the authority to return his certificates otherwise it is nothing to do with the termination order.

In any case, when the petition suffers from gross delay and laches and the termination order was passed way back in 2000 and the petitioner found to have deserted while on training at the threshold of his career, then there is no question of exercising extra-ordinary jurisdiction in favour of the petitioner. Thus, on all counts this petition fails and is hereby dismissed. Rule discharged with no order as to costs.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

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